

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORMAN D. CHESTER, JR.

Petitioner,

v.

CASE NO. 2:10-CV-00402
JUDGE SMITH
MAGISTRATE JUDGE ABEL

DAVID BOBBY, WARDEN,

Respondent.

OPINION AND ORDER

On July 31, 2013, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 be dismissed. Petitioner has filed *Objections* to the Magistrate Judge's *Report and Recommendation*. Petitioner objects to the Magistrate Judge's recommendation of dismissal of claim four and portions of claim one as procedurally defaulted. He objects to the Magistrate Judge's recommendation of dismissal of the remainder of his claims as without merit. Petitioner raises no new arguments, but now contends that he alleges structural errors which warrant relief.

Pursuant to 28 U.S.C. § 636(b), this Court conducts a *de novo* review. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, Petitioner's *Objections*, Doc. No. 36, are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner also seeks a certificate of appealability. When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This standard is a

codification of *Barefoot v. Estelle*, 463 U.S. 880 (1983). *Slack v. McDaniel*, 529 U.S. 473, 484.

To make a substantial showing of the denial of a constitutional right, a petitioner must show

that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “ ‘adequate to deserve encouragement to proceed further.’ ” *Barefoot*, 463 U.S. , at 893, and n. 4....

Id. Where a claim has been dismissed on procedural grounds, a certificate of appealability shall issue where jurists of reason would find it debatable whether the Court was correct in its procedural ruling that petitioner waived his claims of error, and whether petitioner has stated a viable constitutional claim. *Slack v. McDaniel*, 529 U.S. at 484–85. Both of these showings must be made before a court of appeals will entertain the appeal. *Id.*

This Court is not persuaded that reasonable jurists would debate whether petitioner’s § 2254 petition should have been resolved differently. Petitioner’s request for a certificate of appealability therefore is **DENIED**.

IT IS SO ORDERED.

\s\ George C. Smith
GEORGE C. SMITH
United States District Judge